

No. 48499-4-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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PERRY D. SIPE  
Appellant/Petitioner

v.

MELISSA L. SIPE  
Appellee/Respondent

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ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR PIERCE COUNTY

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## **I. Jurisdiction**

The Superior Court for Pierce County had jurisdiction for this case at the time of the parties' dissolution in 2013, as both parties resided in Pierce County at that time, as did the parties' minor children.

Washington Courts retain jurisdiction to modify child support orders so long as one parent resides in Washington State and the child continues to have some connection with Washington State per RCW 26.26.160. *In re Marriage of Steele*, 90 Wn. App. 992, 996, 957 P.2d 247, review denied, 136 Wn.2d 1031 (1998)

## **II. Statement of the Issues**

Whether the Superior Court correctly dismissed the Petitioner's Petition for Post-Secondary Support, where (1) the Order of Child Support stated that the right to petition for post secondary support was reserved provided so long as such right was exercised prior to the child turning 18, (2) the child turned 18 in September 2014 and the Petition for Post-Secondary Support was not filed until May 2015, (3) there was no evidence that the child was dependent and relying upon the parents for the reasonable necessities of life, (4) the Court did not find through an analysis of

the factors articulated in RCW 26.19.090(2) that post-secondary support was warranted?

Short Answer: No. The language in the Order of Support was specifically negotiated as a partial resolution to the then pending dissolution action. The language was clear and unambiguous having been drafted by the Petitioner's counsel. The right to petition for post-secondary support was reserved so long as that right was exercised by the time the child turned 18. The child turned 18 in September 2014, yet the Petitioner did not file the Petition for post-secondary relief until May 2015.

Even if the Court is willing to overlook this major shortcoming in the Petitioner's argument, the Petitioner's Petition for Post-Secondary Support should not be granted as the child was not dependent and relying on the parents for the reasonable necessities of life.

Even more, if the Court is willing to overlook the untimely Petition and the fact that the child was not dependent and relying on the parents for the reasonable necessities of life, the Petitioner's Petition still fails because the factors articulated in RCW 26.19.090(2) do not support imposing an obligation on the Respondent for post-secondary support.

### **III. Statement of the Case**

The parties entered into a partial agreement to resolve their pending dissolution on March 26, 2013. The agreement reached included both the Final Order of Child Support and a Final Parenting Plan. CP170.

In July 2014, Respondent filed a Petition for Modification of Parenting Plan after the two children remaining at home ran away, to the Petitioner's brother's house in Montana. The Respondent also filed a Writ of Habeas Corpus, which was granted by the Court on July 25, 2014. The oldest child remained in Montana where a nonparental custody action was filed by the Petitioner's brother. This was dismissed when the child turned 18 in September 2014.

Trial on the parenting plan modification action in Pierce County occurred in April 2015. No change was made to the parenting plan for the child that remained in Respondent's home.

On May 5, 2015, the Petitioner filed a Petition for Post-Secondary Support. This Petition came before Commissioner Clint Johnson on July 1, 2015, who ordered the matter be continued to July 22 and that both sides needed to address whether or not the child was dependent and relying upon the parents for the

reasonable necessities of life, and to address the factors articulated in RCW 26.19.090(2). On July 21, 2015, Counsel for Petitioner, without notice to opposing counsel, struck the hearing and continued it to August 12. This was repeated six subsequent times between August and December.

At that point, Counsel for Respondent filed a motion to dismiss to be heard before Judge Johnson on January 22, 2016. Judge Johnson granted this motion and the Petition was dismissed.

#### **IV. Statement of Facts**

In March 2013, the parties entered into a partial resolution of the then pending dissolution action, which provided among other relief that the right to petition for post-secondary support needed to be exercised before the child turned 18. CP 173.

In July 2014, both children ran away from home to the Petitioner's brother's house in Montana. CP 100. The oldest elected to remain in Montana, and the Petitioner's brother filed a Nonparental Custody Petition seeking custody of her. CP 100. The youngest was returned to Washington State after several weeks.



CP 100. The Montana action was dismissed when the oldest child turned 18 in September 2015. CP 100.

In May 2015, the Petitioner filed his Petition for Post-Secondary Support, long after the oldest child for whom the post-secondary support was sought had turned 18. CP 85.

The matter was first heard before Commissioner Clint Johnson on July 1, 2015, who continued the matter to July 22, 2015, to allow both sides to provide evidence as to the dependency of the child on the parents for the reasonable necessities of life and to address the factors articulated under RCW 26.19.090(2). CP 123. Counsel for the Petitioner struck this hearing the day prior and then noted and struck 6 separate hearings between July and December 2015. CP 123.

Counsel for Respondent filed the Motion for Summary Judgment on December 21, 2015 and a corrected Motion for Summary Judgment on December 22, 2015. CP 122, CP 129. This Motion was heard before Judge Garold Johnson on January 22, 2016, who dismissed the Petitioner's Petition. CP 166. It is this Order that the Petitioner is bringing forth this appeal on.

## **V. Standard of Review**

The abuse of discretion standard is applied to a discretionary ruling made by the trial court after determining the facts. A trial court is found to have abused its discretion where the decision is “manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 483 P.2d 775 (1971); *Barfield v. City of Seattle*, 100 Wn.2d 878, 676 P.2d 438 (1984).

The discretion conferred upon the trial court by the family law statutes generally requires the trial court to: (1) determine the legally relevant factors upon which to make a discretionary decision, (2) find facts relevant to the legally relevant factors, and then (3) exercise discretion based upon its findings. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997); *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995).

If careful analysis reveals either that the judge failed to determine what the legally relevant factors were or failed to find facts based upon the legally relevant factors, the error may be one of law and therefore subject to de novo review, rather than the abuse of discretion standard. Chapter 65, Washington Family Law Deskbook, Second Edition (2006). De novo review allows the

appellate court to decide a question for itself without any deference to the trial court's determination. The de novo standard is applied to the trial judge's rulings of law. *In re Marriage of Fleege*, 91 Wn.2d 324, 588 P.2d 1136 (1979).

## **VI. Summary of the Argument**

The language in the Order of Support was specifically negotiated as a partial resolution to the then pending dissolution action. The language was clear and unambiguous having been drafted by the Petitioner's counsel. The right to petition for post-secondary support was reserved so long as that right was exercised by the time the child turned 18. The child turned 18 in September 2014, yet the Petitioner did not file the Petition for Post-Secondary Relief until May 2015.

Even if the Court is willing to overlook this major shortcoming in the Petitioner's argument, the Petitioner's Petition for Post-Secondary Support should not be granted as the child was not dependent and relying on the parents for the reasonable necessities of life.

Even more, if the Court is willing to overlook the untimely Petition and the fact that the child was not dependent and relying on the parents for the reasonable necessities of life, the Petitioner's Petition still fails because the factors articulated in RCW 26.19.090(2) do not support imposing an obligation on the Respondent for post-secondary support.

## **VII. Argument**

The language in the Order of Support was specifically negotiated as a partial resolution to the then pending dissolution action. The language was clear and unambiguous having been drafted by the Petitioner's counsel. The right to petition for post-secondary support was reserved so long as that right was exercised by the time the child turned 18. The child turned 18 in September 2014, yet the Petitioner did not file the Petition for Post-Secondary Relief until May 2015.

Petitioner's reliance on *In Re Marriage of Cota*, 177 Wn. App. 527, (Div II, 2013) is misplaced. In *Cota*, the provision for post-secondary support was vague and ambiguous, stating:

Post-secondary support determination is premature and is reserved for future determination.

*Cota*, at 531.

In the present case, the language in the Order of Support stated:

The right to petition for post-secondary support was reserved so long as that right was exercised by the time the child turned 18.

CP 174.

In *Cota*, the children were residing at home with their mother. In the present case, the oldest child had ran away from home, and she was the subject of a Nonparental Custody Petition brought by the Petitioner's brother, which was dismissed when the child turned 18. CP 100. The Petitioner's argument fails because there is no showing that the child was dependent and relying on the parents for the reasonable necessities of life.

In *Cota*, the father was still paying support for the child when the Petition for Post-Secondary Support was brought by the mother. In the present case, the Petitioner, stopped paying child support as soon as the Nonparental Custody Petition was filed in Montana. CP 102. The Court in *Cota* stated:

At issue here is whether the trial court had authority to order postsecondary educational support in light of RCW 26.09.170(3). See Major, 71 Wn.App. at 536.

RCW 26.09.170(3) provides, "Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child." For purposes of this statute, "emancipation" refers to the age of majority - 18. In re Marriage of Gimlett, 95 Wn.2d 699, 702-04, 629 P.2d 450 (1981). If a decree does not provide for post-majority support, a party must file a motion to modify to add such support before the child turns 18. Balch v. Balch, 75 Wn.App. 776, 779, 880 P.2d 78 (1994). Conversely, if a decree expressly provides for post-majority support, a court may modify such support as long as the movant files a motion to modify before the "termination of support". Balch, 75 Wn.App. at 779.

Here, it is undisputed that the trial court entered its order requiring postmajority support after Annamarie turned 18. Therefore, the question is whether, under the child support order in effect when Annamarie turned 18, Anthony's support obligation had terminated when Regina filed her motion to modify. If such support had not terminated, the motion was timely.

Cota, at 533.

The Petitioner's discontinuance of child support when the oldest child ran away to Montana, undermines any argument that he may offer that post-secondary support should have been ordered because the Order of Support was still in effect. The Petitioner cannot have it both ways, which is exactly what he is attempting to argue here. His argument is, because there was an Order of Child Support in place requiring him to pay support, he

was entitled to bring the Petition for Post-Secondary Support, yet, he stopped paying support almost a year prior when the child ran away to Montana. Support had terminated for this child and because she was 18 years old and a legal adult, the court was powerless to compel her return to Washington State. CP 102.

RCW 26.19.090 requires a showing that the child for whom post-secondary support is sought, was dependent and relying on the parents for the reasonable necessities of life at the time of the motion. RCW 26.19.090, reads in part:

the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life.

RCW 26.19.090(2).

This is not a discretionary finding that the court can arbitrarily ignore at its discretion. The Court must make a finding that the child is dependent and relying upon the parents for the reasonable necessities of life as a threshold issue before the specific factors articulated in the statute even comes into play. The Petitioner failed to even address this issue in any of their materials before the lower court or in their brief on appeal.

Finally, the Petitioner failed to even offer any evidence or to even address the specific factors articulated in the statute, which

include 1) Age of the child; 2) the child's needs; 3) the expectations of the parties for their children when the parents were together; 4) the child's prospects, desires, aptitudes, abilities or disabilities; 5) the nature of the postsecondary education sought; and 5) the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together. RCW 26.19.090(2).

The Petitioner was ordered by the Court on July 1, 2015 to brief both the issue of the child being dependent and reliant on the parents for the reasonable necessities of life and the factors articulated under the statute. The Petitioner failed to do so. Rather, the Petitioner struck and renoted a hearing six separate times.

The Court, finding that the Order of Child Support was unambiguous and clearly stated that the right to post-secondary support needed to be exercised prior to the child turning 18, and finding that such a right was not exercised before the child turned 18, correctly dismissed the Petitioner's Petition for Post-Secondary Support.



RCW 26.09.140 provides:

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

RAP 14.2 provides, in pertinent part:

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review.

RAP 18.9 provides, in pertinent part:

The appellate court on its own initiative or on motion of a party may order a party or counsel . . . who . . . files a frivolous appeal . . . to pay terms . . . to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists. *Chapman v. Perera*, 41 Wn. App. 444, 455-56, 704 P.2d 1224 (1985) (citations omitted).

In this case, the Petitioner stopped paying child support for the oldest child as soon as the child was in Montana and the Montana Petition for Nonparental Custody was filed. CP 102. If the

Petitioner was still paying support for the child, and if the child was still living at home and relying on the parents for the necessities of life, and if the factors under RCW 26.19.090(2) supported post-secondary support, then the Petitioner's arguments would be well founded, but if any one of those elements are missing, then the entire argument falls apart. In this case, none of these elements were or have been proved by Petitioner. Therefore, Petitioner has failed to present a debatable issue upon which reasonable minds can differ, and thus his appeal is so devoid of merit that there is no reasonable basis for reversal of the trial court's decision.

### **VIII. Conclusion**

This appeal was brought in bad faith, without any grounding in a correct interpretation of the law and interposed solely to drive up the costs of litigation for the Respondent. There is no legal basis for the court to grant the relief sought by the Petitioner. The entire argument of the Petitioner is based upon a theory that the child support obligation continued until at least May 2015, and therefore the respondent should pay for post-secondary support.

The fact that the Petitioner stopped paying support in July 2014, as soon as the child was in Montana is the best

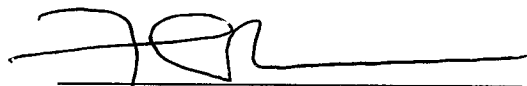
demonstration of the bad faith with which this appeal was brought. There has been an intentional attempt to deceive the court by failing to disclose this fact.

Even if the Court were inclined to disregard the nonpayment of support starting in July 2014, the Petitioner failed to demonstrate that the child was dependent and relying on the parents for the reasonable necessities of life, which is a mandatory showing before the Court even gets to the factors which ultimately determine whether or not post-secondary support is granted.

The appeal by the Petitioner should therefore be denied, and Petitioner should be ordered to pay the reasonable costs of defending this appeal incurred by the Respondent.

Dated this 3<sup>rd</sup> day of August, 2016.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'F. Ricketts', with a long horizontal line extending to the right.

F. Richard Ricketts, WSBA 33641  
Attorney for Appellee/Respondent

**F RICHARD RICKETTS LAW OFFICE PLLC**

**August 04, 2016 - 8:45 AM**

**Transmittal Letter**

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